THE HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P.No.9591 of 1997

DATED:08.08.2006

Between:

A. Narsaiah ..Petitioner

And

The District Collector, (Tribal Welfare), Warangal, Warnagal District.
And others.

..Respondents

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ORDER:

The petitioner was working as Headmaster-cum-Warden of Ashrama School and Hostel at Iylapur, Warnagal District. On 03.12.1985, when the 2nd respondent visited the Ashram School, he noticed that it was closed. On enquiry, it was reported that the school was closed since August, 1985 and the petitioner was absent since two months, without applying any leave. Thereafter, the petitioner was placed under suspension by the 1st respondent, *vide* his proceedings, dated 03.01.1986, alleging that he misappropriated an amount of Rs.27,380.50ps.

On 03.12.1985, the 2nd respondent submitted a report to the police stating that the petitioner misappropriated an amount of Rs.27,380-50ps. Basing on the said report, the police registered a case in Crime No.59 of 1986 under Section 409 of I.P.C. On filing charge sheet by the police under Sections 409, 471 and 420 of I.P.C., a case in C.C.No.62 of 1990, was filed before the Judicial First Class Magistrate, Mulugu. Subsequently, the learned Magistrate by taking a lenient view convicted the accused officer under Section 409 I.P.C. and sentenced him to suffer imprisonment till rising of the Court and also pay a fine of Rs.1,000/-, in default, to suffer S.I. for three months and he was not found guilty for the offence under Sections 420 and 471 IPC.

Meanwhile, the petitioner filed the present writ petition seeking to declare the suspension order, dated 03.01.1986, issued by the 1st respondent, as illegal and arbitrary and consequently direct the respondents to pay the subsistence allowance. On 07.09.1998, in W.P.M.P.No.11721 of 1997, this Court passed an interim order directing the respondents to pay subsistence allowance to the petitioner as per the C.C.A. Rules and also to pay the arrears of subsistence allowance in lumpsum within one month from the date of receipt of the order.

Pursuant to the interim order, dated 07.09.1998, passed by this Court, the petitioner was reinstated into service vide Proc.No.

E2-B/5932/86, dated 15.04.1999, and the suspension period of the individual was treated as on duty under F.R.54 B (3) with effect from 03.01.1986 to 15.04.1999, and accordingly the pay of the individual has been re-fixed in revised pay scales of 1986 and 1993 and submitted bills in the Sub-Treasury Officer for drawing the amount, but the treasury authorities had returned the claims with an objection that as per Government Memos, dated 08.05.1991 and 17.01.1998, all claims of pay fixations in revised pay scales 1986 and 1993, which were beyond the dates, need special sanction of Government.

In view of the above facts, the CTW, AP, Hyderabad, submitted necessary proposals to the Government for sanction. On such submission, the Government reviewed the said disciplinary case and informed vide Rc.No.6861/TW/2002, dated 06.07.2002, that the accused officer is convicted by the competent Court and hence, regularization of suspension period is not warranted and the suspension period was not treated as on duty and recover the misappropriated amount. As per the instructions of the Government, orders were issued vide Proc.No.E2/5932/85, dated 27.03.2003, by the 3rd respondent cancelling the earlier proceedings, dated 25.05.1999, wherein the suspension period of the officer was treated as on duty.

Once the 3rd respondent passed order cancelling the earlier proceedings and treating the suspension period as not on duty, the question of paying subsistence allowance does not arise. The petitioner has already attained the age of superannuation. Unless the proceedings of the 3rd respondent are set aside, the petitioner is not entitled to claim subsistence allowance. Hence, the writ petition is liable to be dismissed.

The writ petition is accordingly dismissed, giving liberty to the petitioner to avail the remedies by challenging the proceedings 27.03.2003 issued by the 3rd respondent. No costs.

A. GOPAL REDDY, J

8th August 2006.

GJ